



ATTORNEY GENERAL OF MISSOURI
ERIC SCHMITT

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BY U.S. MAIL & EMAIL

Dr. Matt Robinson
Superintendent
Cameron R-1 School District
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Dear Dr. Robinson,

I understand you received an October 28, 2019 letter from the Freedom From Religion Foundation ("FFRF") concerning voluntary prayer outside of football games. I write to assure you that the Establishment Clause does not prohibit public prayer, and that the First Amendment protects the rights of public-school students to engage in voluntary prayer in public spaces. In fact, public invocations to God constitute a cherished part of our national history.

FFRF is an extreme anti-religion organization that seeks to intimidate local governments into surrendering their citizens' religious freedom and to expunge any mention of religion from the public square. Contrary to FFRF's radical agenda, the U.S. Supreme Court has repeatedly upheld the historic role of public prayer in our Nation's heritage and public institutions. *See, e.g., Town of Greece v. Galloway*, 572 U.S. 565 (2014); *Marsh v. Chambers*, 463 U.S. 783 (1983). The Supreme Court has also repeatedly upheld the First Amendment freedom of public-school students and organizations to participate in religious activities on public property. *See, e.g., Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819 (1995); *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993).

On October 3, 1789, when President George Washington famously instituted the "National Day of Thanksgiving" that Americans still celebrate as Thanksgiving Day, he stated that "it is the duty of all Nations to acknowledge the providence of Almighty God, to obey his will, to be grateful for his benefits, and humbly to implore his protection and favor." George Washington, *Thanksgiving Proclamation* (Oct. 3,

1789). Similarly, on February 4, 2016, President Obama commenced his remarks at the National Prayer Breakfast by stating, “Giving all praise and honor to God for bringing us together here this morning.” *Remarks by the President at National Prayer Breakfast*, The White House (Feb. 4, 2016). Based on FFRF’s anti-religious view, such public invocations of God by President Washington, President Obama, and every President in between were illegal and unconstitutional.

The vast majority of the time, FFRF’s threats ring hollow. According to its 2018 annual report, FFRF sent more than 1,000 complaint letters last year, and yet it filed only five new lawsuits. For example, as Sports Illustrated recently reported, FFRF demanded in 2014 that the Clemson University football team stop its team prayers, Bible studies, and organized church trips. But the University concluded its football team was compliant with the law and made no changes, and FFRF has taken no action in the five years since. See Tim Rohan, *Faith, Football, and the Fervent Religious Culture at Dabo Swinney’s Clemson*, SPORTS ILLUSTRATED (Sept. 4, 2019).

When FFRF has filed suit, courts have repeatedly rejected their attempts to whitewash religion from the public square. As examples, FFRF lost cases in which it sought to:

- Stop schoolchildren from reciting the Pledge of Allegiance. *Freedom From Religion Found. v. Hanover Sch. Dist.*, 626 F.3d 1 (1st Cir. 2010).
- Erase “In God We Trust” from our currency. *Newdow v. Peterson*, 753 F.3d 105 (2d Cir. 2014).
- Strike “so help me God” from a Missouri tax form. *Oliver v. State Tax Comm’n of Missouri*, 37 S.W.3d 243 (Mo. banc 2001).
- Eliminate religious Christmas carols and a nativity scene from a high school program. *Freedom From Religion Found., Inc. v. Concord Cmty. Sch.*, 885 F.3d 1038 (7th Cir. 2018); see also *Freedom From Religion Found., Inc. v. City of Warren, Mich.*, 707 F.3d 686 (6th Cir. 2013) (rejecting challenge to city’s nativity scene).
- End President Bush’s Faith-Based and Community Initiatives program. *Hein v. Freedom From Religion Found., Inc.*, 551 U.S. 587 (2007).
- Remove a World War II memorial statue of Jesus Christ from national forest land. *Freedom From Religion Found. v. Weber*, 628 Fed. Appx. 952 (9th Cir. 2015).
- Remove the Ten Commandments from the Colorado state capitol grounds. *State v. Freedom From Religion Found., Inc.*, 898 P.2d 1013 (Colo. 1995).

FFRF’s track record is no better when it comes to cases involving prayer. FFRF lost when it tried to stop voluntary prayers at the outset of court proceedings in a Texas county. *Freedom From Religion Found., Inc. v. Mack*, CV H-17-881, 2018 WL 6981153 (S.D. Tex. Sept. 27, 2018). FFRF lost multiple lawsuits when it tried to

reverse Day-of-Prayer proclamations issued by President Obama and governors in Arizona, Colorado, and Texas. *Freedom From Religion Found., Inc. v. Obama*, 641 F.3d 803 (7th Cir. 2011); *Freedom From Religion Found., Inc. v. Perry*, CIV.A. H-11-2585, 2011 WL 3269339 (S.D. Tex. July 28, 2011); *Hickenlooper v. Freedom From Religion Found., Inc.*, 338 P.3d 1002 (Colo. 2014); *Freedom From Religion Found., Inc. v. Brewer*, 1 CA-CV 12-0684, 2013 WL 2644702 (Ariz. Ct. App. June 11, 2013). FFRF lost when it challenged Congress' decision to not allow an atheist to serve as guest chaplain. *Barker v. Conroy*, 921 F.3d 1118 (D.C. Cir. 2019). And FFRF lost when it challenged pastoral care provided to veterans by chaplains in the Veterans Administration. *Freedom From Religion Found., Inc. v. Nicholson*, 536 F.3d 730 (7th Cir. 2008). This is by no means a comprehensive list of FFRF's failures to persuade courts to adopt its radical anti-religious views. In fact, after its many empty threats and courtroom failures, one might say that FFRF's latest threat to you resembles "some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried." *Lamb's Chapel*, 508 U.S. at 398 (Scalia, J., concurring in the judgment).

As noted above, contrary to FFRF's letter to you, the Supreme Court has repeatedly upheld voluntary prayer in public settings. See *Town of Greece v. Galloway*, 572 U.S. 565 (2014) (upholding prayer to open town government meetings); *Marsh v. Chambers*, 463 U.S. 783 (1983) (upholding prayer to open legislative sessions). In *Town of Greece*, the Supreme Court concluded:

Ceremonial prayer is but a recognition that, since this Nation was founded and until the present day, many Americans deem that their own existence must be understood by precepts far beyond the authority of government to alter or define and that willing participation in civic affairs can be consistent with a brief acknowledgment of their belief in a higher power, always with due respect for those who adhere to other beliefs.

Town of Greece, 572 U.S. at 591. Justice Kennedy's opinion for the Court in *Town of Greece* also found that, unlike the cases relied upon by FFRF, there was no evidence of coercion to participate in the prayer. *Id.* at 589-90. The record contained no evidence of the town favoring or disfavoring any person based on prayer participation, nor did evidence show a person could not leave, arrive late, or protest later. *Id.* "In this case, as in *Marsh*," Justice Kennedy noted, "board members and constituents are free to enter and leave with little comment and for any number of reasons." *Id.* at 590. Following the Court's decision in *Town of Greece*, the Fifth Circuit recently upheld a school policy allowing students to pray before school board meetings. *Am. Humanist Ass'n v. McCarty*, 851 F.3d 521 (5th Cir. 2017).

The Supreme Court has recognized that voluntary prayer is constitutional, but FFRF has not. FFRF opposes prayer even under the most compelling circumstances.

Last year, FFRF complained after a football team, coaches, and fans held hands and prayed for the head coach's four-year-old daughter, who was in the hospital battling a severe illness. Todd Starnes, *School Faces Attack over Post-Game Prayer for Coach's Daughter*, FOX NEWS (Sept. 20, 2018). In 2017, FFRF complained after players and coaches from both teams prayed for an injured player who had been rushed to the hospital because he could not feel his legs. Kendi A. Rainwater, *Central Coach, School Board Stand by Prayer after Freedom From Religion Group Files Complaint*, CHATTANOOGA TIMES FREE PRESS (Feb. 2, 2017).

Our understanding is that no coach or other Cameron official has forced any football player to participate in prayer or taken any action against any player who chose not to participate. The prayer occurs outside of the football game. The prayer is not broadcast over stadium loudspeakers, and fans evidently cannot hear any part of the prayer. The school district reports that it received no complaints from anyone about the prayer, and FFRF does not reference any complainant in their letter. Evidently, FFRF's threat does not reflect any discomfort with the prayers in the local community. Rather, it reflects only FFRF's radical agenda. And without a complainant, FFRF lacks standing to sue the school district, no matter how strongly it objects to this voluntary prayer.

But if FFRF seeks to silence voluntary prayer outside of Cameron's football games through a lawsuit, we will support your football team's lawful, voluntary decision to pray.

Sincerely,



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Attorney General

cc: Cameron R-1 School District School Board Members
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